

Introduced by Senator Burton

January 22, 2003

An act to ~~add Section 1164.15 to~~ amend Sections 1164, 1164.3, and 1164.12 of, and to repeal Section 1164.14 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 75, as amended, Burton. Agricultural labor relations.

Existing law provides a mediation ~~procedure~~ *procedures* applicable to specified agricultural employers and labor organizations that are certified as the exclusive bargaining agent of a bargaining unit of agricultural employees. The ~~procedure permits~~ *procedures permit* either party to seek assistance from the Agricultural Labor Relations Board in the event that the parties are unable to reach a collective bargaining agreement *and to petition the courts for review of an order of the board imposing a collective bargaining agreement upon limited grounds. These mediation procedures will be repealed as of January 1, 2008.*

This bill would eliminate the repeal of the mediation procedures. This bill further sets forth a nonexclusive list of factors that mediators appointed pursuant to those procedures would be permitted to consider in resolving the issues in dispute.

Existing law provides grounds upon which the board may accept for review a petition challenging provisions of a mediator's report.

This bill would include among those grounds a provision of the collective bargaining agreement set forth in the mediator's report that is arbitrary or capricious in light of the mediator's findings of fact.

~~This bill would require the board, by July 1, 2004, to compile a list of all certified labor organizations that have not obtained a collective bargaining agreement with the employer of the agricultural employees represented by the labor organization and to post the list, along with specified information, on the board's Web site.~~

~~This bill would further require the board, by July 1, 2004, to advise each labor organization on the list and each respective employer of their rights and responsibilities under those provisions of the Labor Code providing for mandatory mediation to achieve a collective bargaining agreement.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1164.15 is added to the Labor Code, to~~
2 ~~read:~~

3 ~~1164.15. On or before July 1, 2004, the board shall:~~

4 ~~(a) Compile a list of all labor organizations that have been~~
5 ~~certified as the exclusive bargaining agent of a bargaining unit of~~
6 ~~agricultural employees and that have not obtained a collective~~
7 ~~bargaining agreement with the employer of the represented~~
8 ~~agricultural employees. The list shall include the name of each~~
9 ~~certified labor organization, the date of the organization's~~
10 ~~certification, and the name of the agricultural employer.~~

11 ~~(b) Post the list on its Web site.~~

12 ~~(c) Advise in writing each certified labor organization and~~
13 ~~agricultural employer on the list of the rights and responsibilities~~
14 ~~set forth in this chapter.~~

15 ~~SECTION 1. Section 1164 of the Labor Code is amended to~~
16 ~~read:~~

17 ~~1164. (a) An agricultural employer or a labor organization~~
18 ~~certified as the exclusive bargaining agent of a bargaining unit of~~
19 ~~agricultural employees may file with the board, at any time~~
20 ~~following (1) 90 days after a renewed demand to bargain by an~~
21 ~~agricultural employer or a labor organization certified prior to~~
22 ~~January 1, 2003, which meets the conditions specified in Section~~
23 ~~1164.11 or (2) 180 days after an initial request to bargain by an~~
24 ~~agricultural employer or a labor organization certified after~~
25 ~~January 1, 2003, a declaration that the parties have failed to reach~~

1 a collective bargaining agreement and a request that the board
2 issue an order directing the parties to mandatory mediation and
3 conciliation of their issues. “Agricultural employer,” for purposes
4 of this chapter, means an agricultural employer, as defined in
5 subdivision (c) of Section 1140.4, who has employed or engaged
6 25 or more agricultural employees during any calendar week in the
7 year preceding the filing of a declaration pursuant to this
8 subdivision.

9 (b) Upon receipt of a declaration pursuant to subdivision (a),
10 the board shall immediately issue an order directing the parties to
11 mandatory mediation and conciliation of their issues. The board
12 shall request from the California State Mediation and Conciliation
13 Service a list of nine mediators who have experience in labor
14 mediation. The California State Mediation and Conciliation
15 Service may include names chosen from its own mediators, or
16 from a list of names supplied by the American Arbitration
17 Association or the Federal Mediation Service. The parties shall
18 select a mediator from the list within seven days of receipt of the
19 list. If the parties cannot agree on a mediator, they shall strike
20 names from the list until a mediator is chosen by process of
21 elimination. If a party refuses to participate in selecting a mediator,
22 the other party may choose a mediator from the list. The costs of
23 mediation and conciliation shall be borne equally by the parties.

24 (c) Upon appointment, the mediator shall immediately
25 schedule meetings at a time and location reasonably accessible to
26 the parties. Mediation shall proceed for a period of 30 days. Upon
27 expiration of the 30-day period, if the parties do not resolve the
28 issues to their mutual satisfaction, the mediator shall certify that
29 the mediation process has been exhausted. Upon mutual
30 agreement of the parties, the mediator may extend the mediation
31 period for an additional 30 days.

32 (d) Within 21 days, the mediator shall file a report with the
33 board that resolves all of the issues between the parties and
34 establishes the final terms of a collective bargaining agreement,
35 including all issues subject to mediation and all issues resolved by
36 the parties prior to the certification of the exhaustion of the
37 mediation process. With respect to any issues in dispute between
38 the parties, the report shall include the basis for the mediator’s
39 determination. The mediator’s determination shall be supported
40 by the record.

1 (e) *In resolving the issues in dispute, the mediator may consider*
2 *those factors commonly considered in similar proceedings,*
3 *including:*

4 (1) *The stipulations of the parties.*

5 (2) *The financial condition of the employer and its ability to*
6 *meet the costs of the contract in those instances where the employer*
7 *claims an inability to meet the union's wage and benefit demands.*

8 (3) *The corresponding wages, benefits, and terms and*
9 *conditions of employment in other collective bargaining*
10 *agreements covering similar agricultural operations with similar*
11 *labor requirements.*

12 (4) *The corresponding wages, benefits, and terms and*
13 *conditions of employment prevailing in comparable firms or*
14 *industries in geographical areas with similar economic*
15 *conditions, taking into account the size of the employer, the skills,*
16 *experience, and training required of the employees, and the*
17 *difficulty and nature of the work performed.*

18 (5) *The average consumer prices for goods and services*
19 *according to the California Consumer Price Index, and the overall*
20 *cost of living, in the area where the work is performed.*

21 SEC. 2. *Section 1164.3 of the Labor Code is amended to read:*

22 1164.3. (a) Either party, within seven days of the filing of the
23 report by the mediator, may petition the board for review of the
24 report. The petitioning party shall, in the petition, specify the
25 particular provisions of the mediator's report for which it is
26 seeking review by the board and shall specify the specific grounds
27 authorizing review by the board. The board, within 10 days of
28 receipt of a petition, may accept for review those portions of the
29 petition for which a prima facie case has been established that (1)
30 a provision of the collective bargaining agreement set forth in the
31 mediator's report is unrelated to wages, hours, or other conditions
32 of employment within the meaning of Section 1155.2, ~~or~~ (2) a
33 provision of the collective bargaining agreement set forth in the
34 mediator's report is based on clearly erroneous findings of
35 material fact, *or (3) a provision of the collective bargaining*
36 *agreement set forth in the mediator's report is arbitrary or*
37 *capricious in light of the mediator's findings of fact.*

38 (b) If it finds grounds exist to grant review within the meaning
39 of subdivision (a), the board shall order the provisions of the report
40 that are not the subject of the petition for review into effect as a

1 final order of the board. If the board does not accept a petition for
2 review or no petition for review is filed, then the mediator's report
3 shall become a final order of the board.

4 (c) The board shall issue a decision concerning the petition and
5 if it determines that a provision of the collective bargaining
6 agreement contained in the mediator's report violates the
7 provisions of subdivision (a), it shall, within 21 days, issue an
8 order requiring the mediator to modify the terms of the collective
9 bargaining agreement. The mediator shall meet with the parties for
10 additional mediation for a period not to exceed 30 days. At the
11 expiration of this mediation period, the mediator shall prepare a
12 second report resolving any outstanding issues. The second report
13 shall be filed with the board.

14 (d) Either party, within seven days of the filing of the
15 mediator's second report, may petition the board for a review of
16 the mediator's second report pursuant to the procedures specified
17 in subdivision (a). If no petition is filed, the mediator's report shall
18 take immediate effect as a final order of the board. If a petition is
19 filed, the board shall issue an order confirming the mediator's
20 report and order it into immediate effect, unless it finds that the
21 report is subject to review for any of the grounds specified in
22 subdivision (a), in which case the board shall determine the issues
23 and shall issue a final order of the board.

24 (e) Either party, within seven days of the filing of the report by
25 the mediator, may petition the board to set aside the report if a
26 prima facie case is established that any of the following have
27 occurred: (1) the mediator's report was procured by corruption,
28 fraud, or other undue means, (2) there was corruption in the
29 mediator, or (3) the rights of the petitioning party were
30 substantially prejudiced by the misconduct of the mediator. For the
31 sole purpose of interpreting the terms of paragraphs (1), (2), and
32 (3), case law that interprets similar terms used in Section 1286.2
33 of the Code of Civil Procedure shall apply. If the board finds that
34 any of these grounds exist, the board shall within 10 days vacate
35 the report of the mediator and shall order the selection and
36 appointment of a new mediator, and an additional mediation
37 period of 30 days, pursuant to Section 1164.

38 (f) Within 60 days after the order of the board takes effect,
39 either party or the board may file an action to enforce the order of
40 the board, in the superior court for the County of Sacramento or

1 in the county where either party's principal place of business is
2 located. No final order of the board shall be stayed during any
3 appeal under this section, unless the court finds that (1) the
4 appellant will be irreparably harmed by the implementation of the
5 board's order, and (2) the appellant has demonstrated a likelihood
6 of success on appeal.

7 *SEC. 3. Section 1164.12 of the Labor Code is amended to*
8 *read:*

9 1164.12. To ensure an orderly implementation of the
10 mediation process ordered by this chapter, a party may not file a
11 total of more than 75 declarations with the board *prior to January*
12 *1, 2008*. In calculating the number of declarations so filed, the
13 identity of the other party with respect to whom the declaration is
14 filed, shall be irrelevant.

15 *SEC. 4. Section 1164.14 of the Labor Code is repealed.*

16 ~~1164.14. This chapter shall remain in effect only until January~~
17 ~~1, 2008, and as of that date is repealed, unless a later enacted~~
18 ~~statute, that is enacted before January 1, 2008, deletes or extends~~
19 ~~that date.~~

